
(2023) 09 UK CK 0059

In the Uttarakhand High Court

Case No : Second Bail Application (IA No. 12 Of 2023) Bail Application (Ia No. 13 Of 2023) In Criminal Appeal No. 204 Of 2021

Brijesh Kashyap Alias Chhunne And Others

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 364

Citation : (2023) 09 UK CK 0059

Hon'ble Judges : Alok Kumar Verma, J;Pankaj Purohit, J

Bench : Division Bench

Advocate : S.R.S. Gill, Vikas Anand, M.A. Khan

Final Decision : Disposed Of

Judgement

Alok Kumar Verma, J

1. Heard Mr. S.R.S. Gill, Advocate, Mr. Vikas Anand, Advocate and Mr. M.A. Khan, Advocate, on the First Bail Application (IA No.13 of 2023) of Ashok Kashyap, appellant no.2 and Second Bail Application (IA No.12 of 2023) of Brijesh Kashyap alias Chhunne, appellant no.1.

2. The First Bail Application (No.2 of 2021) of the appellant no.1 Brijesh Kashyap alias Chhunne was rejected on 24.05.2022.

3. Appellants have been convicted and sentenced to undergo life imprisonment along with a fine of ₹ 5,000/- each under Section 302 read with Section 34 of Indian Penal Code (in short, "IPC"); they have been convicted and sentenced to undergo rigorous imprisonment for a period of ten years along with a fine of ₹ 5,000/- each under Section 364 IPC, and, they have been further convicted and sentenced to undergo rigorous imprisonment for a period of three years along with a fine of ₹ 2,000/- each under Section 201 IPC. All the sentences have been directed to run concurrently.

4. The case of the prosecution is that on 09.07.2014, Sunil Kumar aged about 20 years (deceased), son of the informant, went to meet with the contractor in connection to labour work, but he did not return home. Appellants were arrested. The dead body of the deceased was recovered on the pointing out of the appellants.

5. Mr. S.R.S. Gill, Advocate, contended that the appellants were not named in the F.I.R. As per the prosecution story, the dead body of the deceased was recovered from the forest area of Gadarpur, Bazpur, but there is no disclosure statements of the appellants. The dead body of the deceased was not recovered on the pointing out of the appellants and there is no motive to commit the murder of the deceased. The dead body was not identifiable. Therefore, there are substantial doubts about the conviction. Appellants have been in judicial custody for more than three and a half years. Appellants are permanent resident of District Udham Singh Nagar, therefore, there is no chance of their absconding. Appellants have no criminal history, and, the appellants were on bail during the trial and the conditions of bail were never misused by them.

6. Learned counsel for the State has opposed the bail application, however, he fairly conceded that the appellants were on bail during trial and the conditions of bail were never misused by them.

7. Considering the facts and circumstances of the case, this Court is inclined to grant bail to the appellants, namely, Brijesh Kashyap alias Chhunne and Ashok Kashyap, provided they submit their personal bonds and two reliable sureties each in the like amount to the satisfaction of the court concerned with the condition that the appellants shall maintain peace and tranquility during the pendency of the appeal.

8. The Bail Application (IA No.13 of 2023) and Second Bail Application (IA No.12 of 2023) stand disposed of accordingly.